

**A GUIDE TO
ADVERSE ACTIONS
INVOLVING
INDIVIDUAL RESERVE MEMBERS/IMAs**

**Prepared by HQ ARPC/JAM
February 2004**

1. **Introduction.** Commanders are responsible for the good order and discipline of the members – those in the Regular Air Force and the Air Force Reserve – under their command. It is the commander’s responsibility, then, to determine what action is appropriate when a member’s duty performance begins to decline or when the member engages in misconduct. Where reservists are concerned, perceived limits on command authority often lead to questions regarding the propriety of various actions. While there are some limitations, there is still a broad range of options available. This guide is intended to assist base legal offices in effectively advising commanders on available options.

2. **Types of Adverse Actions Available.**

a. Adverse Administrative Actions. Regardless of whether a reservist is on active duty orders, performing inactive duty training (IDT), or has “reverted” to his/her civilian status, the commander has authority to initiate adverse administrative actions. The same range of actions available for active duty members is available for reservists as well. These actions include, but are not limited to

- (1) Letters of admonishment, counseling, and reprimand (AFI 36-2907)
- (2) Unfavorable Information Files (UIFs) (AFI 36-2907)
- (3) Officer Selection Records (OSRs) (AFI 36-2608)
- (4) Control Rosters (AFI 36-2907)
- (5) Referral performance reports (AFI 36-2406)
- (6) Entry into the Body Composition Improvement Program (AFI 10-248)
- (7) Promotion propriety action (AFI 36-2504)
- (8) Demotion action (AFI 36-2503): Please note, paragraph 16.2.1 applies to centrally managed IMAs (HC, JA, SG). For all others forward completed actions to HQ ARPC/DPBA, 6760 E. Irvington Place #2010, Denver, CO, 80280-2010. Questions may be directed to the Promotions Eligibility Division at (DSN) 926-6398.
- (9) Firearms withdrawal (AFI 31-207)
- (10) Suspended access and/or revocation of security clearance (IAW AFI 31-501)
- (11) Denial of reenlistment (AFI 36-2612)
- (12) Officer Grade Determinations (AFI 36-3209)
- (13) Involuntary reassignment (AFI 36-2115)

(14) Dropping officers from the rolls (AFI 36-3209)

(15) Administrative discharge action (AFI 36-3209)

b. UCMJ Authority. The commander's authority for UCMJ purposes (Article 15s and courts-martial) depends on whether there is jurisdiction over the person and conduct of the reservist. See 10 U.S.C. §§ 802 and 803.

(1) Basic rules about jurisdiction:

(a) For reservists on active duty, including those who are TDY, there is UCMJ jurisdiction over both the person and offenses committed during the tour for the duration of the individual's orders. Jurisdiction begins as of 0001 on the date the individual is ordered for duty and terminates at 2400 hours on the "release date" on the orders or when the reservist completes his/her travel home, whichever occurs first. In the recent case of United States v. Phillips, 58 MJ 217 (2003), the Court of Appeals for the Armed Forces extended jurisdiction over a reservist's conduct that occurs on a travel day preceding an annual active-duty tour.

(b) For reservists completing inactive duty training (IDT) days, jurisdiction attaches only from the beginning to the end of the duty day. There is no UCMJ jurisdiction for misconduct committed during travel time to and from duty. There is no UCMJ jurisdiction before the individual "signs in" or after the individual "signs out" on a particular IDT day. The duty day refers to the actual period of the duty day (i.e., 0730 – 1630 hours).

(2) Breaks in jurisdiction: If there is not enough time to complete an anticipated UCMJ action before the reservist "reverts" to civilian status, a break in service will not divest the Air Force of UCMJ jurisdiction where the alleged misconduct occurred while on active duty or during an IDT tour. The Air Force can still take action against the reservist upon his/her return to military status – voluntarily or by order – at a later time.

(3) Remedies for Breaks in Jurisdiction. Knowing the "remedies" for breaks in jurisdiction can help the judge advocate effectively advise the commander on his/her options.

(a) Prevention: Prevent breaks in jurisdiction by keeping track of the reservist's military status and working to ensure that UCMJ actions are completed prior to the termination of that status.

(b) Wait for the next duty day: The commander can always do nothing and wait until the reservist returns to military status to initiate or complete an adverse action.

(c) Voluntary Extension: Ask the member to voluntarily extend their military status. Some members are genuinely remorseful or feel so strongly about their defense that they will agree to do so.

(d) Involuntary Extension: Reservists on active duty orders can be involuntarily extended for courts-martial. Under current policy, do not involuntarily extend a reservist for Article 15 action. As reservists performing IDTs are not on active duty orders, they cannot be extended.

(e) Recall: The General Court-Martial Convening Authority has the authority to recall a Reserve member to active duty for a general or special court-martial. (See AFI 51-201, paras 2.8.2 and 2.8.4.) If confinement or other restrictions upon the individual's liberties are contemplated, the Secretary of the Air Force (SAF) must also approve the recall. (See AFI 51-201, para 2.8.5.) Requests for SAF approval must be forwarded through AFLSA/JAJM. Further, as a general rule, do not recall reservists to active duty for nonjudicial punishment or trial by a summary court-martial. However, the MAJCOM commander may waive this restriction "in appropriate cases." (See AFI 51-201, para 2.8.3.) For sample recall and release orders, see the JAJM website (<https://aflsa.jag.af.mil/AF/JUSTICE/JAJM>).

3. Mechanics of Most Common Actions.

a. LORs. Depending on the individual's duty status at the time misconduct occurred, an LOR is sometimes the only true disciplinary action available to the commander (although the commander may take other actions based upon the LOR, such as a referral performance report or requesting an Officer Grade Determination). Also, if there isn't sufficient time to complete an Article 15 prior to the member reverting to civilian status, the commander may want to consider issuing an LOR and establishing a UIF.

(1) If the reservist is on active duty status, service is the same as with any other active duty member. If the reservist is in his/her civilian status at the time the LOR is to be issued, mail it to the individual, certified, return receipt requested. A reservist in civilian status has 30 days to respond. (See AFI 36-2907, *Unfavorable Information File (UIF) Program*, para 3.5.1.4.)

(2) If a UIF or Control Roster is contemplated, notify the individual of that potential in the LOR, with an AF Form 1058 attached, so that the permissible response times (another 30 days if the individual is in civilian status) run concurrently.

(3) If the reservist fails to respond to the certified mail, verify accuracy of the address then re-send the LOR and/or UIF/CR notification through regular U.S. mail. Document all efforts to notify the individual and continue processing the action after allowing a reasonable period of time for response.

b. Nonjudicial Punishment (Article 15s). Once jurisdiction over the person and offense has been determined, the Article 15 process is about the same for reservists as for active duty members. The first piece of paper in the file should be a good copy of the member's orders. The member's orders will be a relevant document throughout the process.

(1) The commander of the unit to which the member is assigned or attached or the commander of the unit to which the member is assigned while TDY issues the Article 15.

(2) Forfeitures: If the member's orders show he has been mobilized or is pulling active duty under another authority during the same period of time as forfeitures, forfeitures happen normally (except a Reserve Pay Office rather than an installation finance office will process the forfeitures). Otherwise, forfeitures are calculated according to DoDFMR 7000.14-R, Vol 7A, Chapters 48 and 49. Also see calculation guide on ARPC/JA website. As a practical matter, forfeitures (and extra duties) are not effective if the member's Title 10 status changes.

(3) Post Processing: After legal sufficiency and supervisory review are completed, a legible copy of the AF Form 3070 and a legible copy of the member's Title 10 orders are sent to the appropriate records/pay offices.

(a) HQ ARPC/DPSRA (Master Records Management Division), 6760 E. Irvington Place #4300, Denver, CO 80280-4300 (DSN: 926-6465). Contractors will scan the documents into the member's master personnel file (optical disk retrieval system called Automated Records Management System (ARMS)), which is maintained at HQ ARPC, and then box/warehouse the documents. Also, send actions concerning O-6's, O-6 selects, general officers and general officer selects to HQ USAF/REPS, 1150 Air Force Pentagon, Washington DC 20330-1150. Forward actions against ANG members who were in Title 10 status at the time of their misconduct to the Office of the Chief Counsel for the National Guard Bureau, 1411 Jefferson Davis Highway, Suite 11300, Arlington, VA 22202-3231. If the action involves placing an Article 15 in an officer selection record, see (b) below.

(b) HQ ARPC/DPB (Directorate of Reserve of Air Force Selection Board Secretariat), 6760 E. Irvington Place #2000, Denver, CO 80280-2000 (DSN: 926-6401). Send the original officer selection record documents along with a legible copy of the AF Form 3070 and Title 10 orders to HQ ARPC/DPB. This office will keep the original selection record documents for promotion purposes and then forward the action to HQ ARPC/ DPSRA (Master Records Management Division) for scanning into the member's master personnel file.

(c) Besides mailing the action to either (a) or (b) above, if the nonjudicial punishment includes forfeitures: mail or fax a legible copy of the AF Form 3070, member's Title 10 orders, and an instructional note requesting assistance with forfeitures to AFRPO/FMFQ-P (address: AFRPO/FMFQ-P, ATTN: Mr. Calvin Shelby, 6760 E. Irvington Place #9100, Denver, CO 80280-9100; DSN fax: 926-6739; DSN phone: 926-6727), which is the Reserve Pay Office (RPO) located at HQ ARPC, to determine which regional RPO should receive a copy of the NJP for purposes of forfeitures. Each Reservist designates one of the RPO offices from where his or her Reserve pay is calculated once he or she completes duty. AFRPO/FMFQ-P will forward the action to the correct RPO. Unless the designated RPO receives a copy of the NJP, no forfeitures will be taken. The designated RPO will complete/attach a DD Form 114 to the action and forward the matter to DFAS-DE for implementation.

c. Involuntary Reassignment. When a commander decides that an individual can no longer effectively function in his/her position or unit, the individual can be involuntarily reassigned to the Nonaffiliated Reserve Section (NARS) pursuant to AFI 36-2115, *Assignments Within the Reserve Components*, Chapter 4. Do not use involuntary reassignment as a disciplinary tool.

Ensure all disciplinary and/or administrative actions are completed before initiating the reassignment action.

(1) The IMA Program Manager (for CAT B members) or the unit commander (for CAT A members) initiates the reassignment action.

(2) AFI 36-2115, para 4.2., outlines the required notification procedures. AFI 36-2115, Table 5.1., lists the appropriate categories or reasons for an involuntary reassignment. If the involuntary reassignment is to HQ ARPC for purposes of discharge, cite Table 5.1., Rule 28.

(3) The member has 15 calendar days from the receipt of the notification to respond to the IMA Program Manager (Cat B members)/commander (CAT A members). The IMA Program Manager (CAT B members)/ commander (CAT A members) reviews any response, or lack thereof, and decides whether to continue with the reassignment action. If the decision is to continue processing, the IMA Program Manager (CAT B members)/ commander (CAT A members) forwards the package, including any further recommendation for administrative discharge, if appropriate. The commander (CAT A members) routes package through MAJCOM Reserve Affairs Office for concurrence.

(4) The reassignment and/or recommendation for discharge package is forwarded (including documentation of the misconduct, the notification letter with attachments, proof of service, member's response, and servicing legal office review) to HQ ARPC/DPAP (Directorate of Assignments), 6760 E. Irvington Place #2300, Denver, CO, 80280-2300.

(5) For more information about involuntary reassignments, see the ARPC/JA website (https://aflsa.jag.af.mil/GROUPS/AIR_FORCE/MAJCOMS/ARPC/invlreas.htm).

d. Denial of Pay and Points. In accordance with AFMAN 36-8001, Table 1.2., Note 3, the opportunity to participate for pay and points may be denied only when an individual is: (1) being involuntarily reassigned to an appropriate category of the IRR or the Standby Reserve; (2) if the member is being processed for involuntary separation action in accordance with AFI 36-3209; or (3) court-martial charges have been preferred. Do not use denial of pay and points as a substitute for involuntary reassignment or as other punishment.

e. Administrative Discharge. ARPC initiates and processes discharge actions against Cat B reservists not on extended active duty. Before initiating action, however, the individual must be appropriately reassigned to NARS. (See the involuntary reassignments section above.) AFRC is the point of contact for Cat A reservists.

f. Courts-Martial. The most serious action a commander may take against any member – Regular Air Force or Air Force Reserve – is to take him/her before a court-martial. The base legal office advises the commander on the jurisdictional issues and the propriety of taking a reservist before a court. See the above paragraphs regarding jurisdiction and recall procedures for more information. See also, "Trial By Court-Martial Of Reservists" by Maj David Cory, re-printed from The Reporter, March 1997, available on the ARPC/JA website (https://aflsa.jag.af.mil/GROUPS/AIR_FORCE/MAJCOMS/ARPC/resjuris.htm).

(1) Avoid complicating in personam jurisdiction issues. Coordinate with the IMA's Program Manager Office. Obtain a copy and all amendments of the IMA's orders showing his Title 10 status. Note the date the orders will end and pursue one of the following three courses of action. The first option is to complete the court-martial prior to the end of the member's order. The second option is to release the member at the end or sometime during the order and later recall the member for purposes of court-martial. See paragraph 2b(3)(e) above. The base legal office and/or its numbered Air Force legal office drafts the recall order. It is signed by the General Court-Martial Convening Authority and should contain two fund cites. One fund cite should cover pay & allowances. It may be either the IMA's Program Manager's MPA fund cite or the active duty General/Special Court-Martial Convening Authority's fund cite. The second fund cite should cover travel & per diem. This should be the active duty General/Special Court-Martial Convening Authority's fund cite. The third option is to retain/continue the member on orders until the court-martial is completed and the member is released. This also requires drafting a special order, similar to the recall order. It should be signed by either the Special or General Court-Martial Convening Authority. See AFI 33-328 and AFMAN 36-8001, paragraph 1.8.2. Sample orders are at Attachments 1 & 2.

(2) Avoid records management/data systems confusion. After the court-martial, fax the Report of Results of Trial and confinement order to HQ ARPC/JA (DSN fax: 926-6586) and to the IMA's Program Manager Office. If the member was convicted, the active duty MPF and the Program Manager Office coordinate and accomplish an AF Form 2098 (duty status change). If the member was convicted, the Program Manager should also coordinate with HQ ARPC/DPA to place the member in Standby Reserve/NARS until either completion of appellate review and active duty accomplishes the final supplementary order & discharge or (in the event the sentence did not include bad conduct discharge/dishonorable discharge/dismissal) completion of appellate review and administrative discharge action. HQ ARPC/JA will provide HQ ARPC contractors the Report of Results of Trial to scan into the member's master personnel file (ARMS) and will provide HQ ARPC/DPPS and HQ ARPC/DPA the Report of Results of Trial and confinement order necessary for data system code changes (assignment availability code and duty status change).

4. The foregoing information should help you understand potential adverse actions involving reservists. If you have any questions, please feel free to call my office (DSN 926-6494, 1-800-0102, ext. 71251, (303) 676-6494).

CHARLES W. HASSKAMP, Colonel, USAF
Staff Judge Advocate

Attachments:

1. Sample Special Order--Recall
2. Sample Special Order--Retention

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS (Name of Wing) (MAJCOM)
123 ADDRESS, SUITE 200
ANYWHERE AIR FORCE BASE, STATE ZIP CODE

SPECIAL ORDER
SIGNED
AB-11 (Order #)

DATE

By direction of the General Court-Martial Convening Authority, Commander _____ Air Force, Anywhere Air Force Base, (State), the Air Force orders MAJOR JOHN B. DOE, SSN: 000-00-0000, United States Air Force Reserve, (Reservist's unit of attachment), to involuntary extended active duty effective (day/month/year), under the following authorities: 10 U.S.C. 802, AFI 51-201, and AFI 33-328, for the purpose of disciplinary action. The duration of this active duty is indefinite. The unit commander must take action to release the member from active duty upon termination of disciplinary proceedings, including the service of any confinement or restriction adjudged. Unit of attachment is (name of unit), Anywhere Air Force base, (State). Member's home of record is (City, State). Member must report to the (specific reporting instructions such as squadron orderly room, specific address, _____ AFB) on (day/month/year) at (time of day).

Expenses chargeable to:

Pay and Allowances FY0#: (GCMCA fund cite or Program Manager's MPA fund cite if approved)

Travel and Per Diem FY0#: (O & M active duty fund cite--usually GCMCA fund cite)

JOE B. COMMANDER, Colonel, USAF
Commander

Distribution:

- 1 - HQ AFRC/CC
- 1 - HQ ARPC/CC
- 1 - GCMCA/CC
- 1 - SPCMCA/CC
- 1 - Member's Program Manager Office
- 1 - Name of Member

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS (Name of Wing) (MAJCOM)
123 ADDRESS, SUITE 200
ANYWHERE AIR FORCE BASE, STATE ZIP CODE

SPECIAL ORDER
SIGNED
AB-11 (Order #)

DATE

By direction of the Special Court-Martial Convening Authority, Commander, _____ Air Force Base, (State), AIRMAN JOHN B. SNUFFY, SSN: 000-00-0000, United States Air Force Reserve, (Reservist's unit of attachment), _____ Air Force Base, (State), originally ordered to active duty pursuant to Reserve Order (#), will continue on active duty, effective (day/month/year--making sure there's no gap from Reserve order expiration date), under the following authority: 10 U.S.C. 802, AFMAN 36-8001, paragraphs 1.8.1. & 1.8.2., AFI 33-328, AFI 51-201, and RCM 202(c), for disciplinary purposes under the UCMJ. The duration of this active duty is indefinite. The unit commander must take action to release the member from active duty upon termination of disciplinary proceedings, including the service of any confinement or restriction adjudged.

Expenses chargeable to:

Pay and Allowances FY0#: (Convening Authority's fund cite or Program Manager's MPA fund cite if approved)

Travel and Per Diem FY0#: (O & M active duty fund cite--usually Convening Authority's fund cite)

JOE B. COMMANDER, Colonel, USAF
Commander

Distribution:

1 - HQ AFRC/CC

1 - HQ ARPC/CC

1 - GCMCA/CC

1 - SPCMCA/CC

1 - Member's Program Manager Office

1 - Name of Member